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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 169.

(Formerly No. 1029)
(October Term, 1961)

LUTHER ROBINSON MADDOX,
Petitioner,

vs.

FIDELITY INVESTMENT & TITLE CO., INC., and JAMES C. CHRISTOPHER, AS SECRETARY THEREOF and INDIVIDUALLY; F. ARCHIE MEATYARD, JR., INDIVIDUALLY and AS ATTORNEY FOR DISTRICT SUPPLY, INC., ET AL.; OWEN E. OSBORNE, RAYMOND O. SHROYER and MARY K. SHROYER, His Wife,
Respondents.

PETITION FOR A RECONSIDERATION OF, AND A REHEARING ON, ORDER OF OCTOBER 8, 1962, DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

LUTHER ROBINSON MADDOX, *Pro Se,*
525 Woodward Building,
Washington 5, D.C.
(Phones: DI 7-2323; CO 5-4111)

DATED: November 2, 1962.

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Petitioner, Luther Robinson Maddox, moves this Honorable Court to vacate its Order of October 8, 1962, denying his Petition for a Writ of Certiorari, in the above-entitled cause, and to grant him a Reconsideration of and a Re-

hearing thereon, pursuant to Rule 58(2) of this Court, for the following reasons and on grounds which were available to Petitioner or have in the meantime intervened —and by him not presented previously, or were not presented properly.

I.—

THE LATE JUDGE CHESNUT OF THE TRIAL COURT WAS HIGHLY BIASED AND PREJUDICED AGAINST PETITIONER, THROUGHOUT THE PROCEEDINGS IN THIS CASE, IN FAVOR OF THE RESPONDENTS, ESPECIALLY SO WITH RESPECT TO MEATYARD AND CHRISTOPHER.

Meatyard was a United States Commissioner in Montgomery County, Maryland, and was appointed as such by that Court. The records and files before this Court show plainly that the Trial Judge could not hear very well what was said at times in hearings and even made rulings when he stated that he did not hear the question *but would sustain the objection anyway*. The record, in instant case, is long and filled up with facts that show the Trial Court's bias and prejudice and that he did not provide Petitioner with a fair and impartial trial and hearings as the law requires. He acted at times as attorney for Respondents, and in many instances, he asked for objections to questions so he might sustain them. The late Judge Chesnut was eighty-eight years old when this case was tried before him and his THIRTEEN-PAGE instructions to the jury, on why he was directing a verdict on Counts FOUR, FIVE and SIX, speaks for itself (pp. 80-93 in Appellant's Brief filed with this Court, and see Original Transcript of Trial on 4/25/61, pp. 175-195; with VER-

DICT). It is suggested and requested that this Court read carefully these instructions with the VERDICT OF JURY thereon for the proper picture—and that the SIXTH COUNT was allowed to be amended by Meatyard, *after the verdict*, on this Count when no issue was, or had been, made by him. There was no issue before the Trial Court, yet the Jury brought in a verdict upon direction by the Trial Court. *This was certainly a most extraordinary proceeding.* It was common knowledge around his Court that the late Judge Chesnut could not hear very well and this fact—that he couldn't hear very well—prejudiced the Petitioner's case throughout the proceedings before him.

See Transcript of Meatyard's Testimony, as a hostile witness, on 4/24/61, (page 129), where the following appears: (THE COURT;) *"I sustain the objection, I don't know what the question is."* In many places in the Transcript of the testimony of witnesses, the Trial Court is shown to be that he could not hear very well, and where he asked for a repetition of what had been said. *The entire testimony of Meatyard and Christopher should have gone to the jury on the questions of fact*, in the face of conflicting inferences of fact therein and their three decades, or more, of intimate friendship. The Trial Court could not pass on such inferences of fact as here shown and which conflicted to the Nth degree. This case was a Tort Action for a conspiracy, with great damages involved, to breach contracts of employment between an attorney and his clients, and under such conditions as existed in this case, great latitude in admitting evidence should have been allowed. Fraud was also charged.

In a very recent case, *Hernandez* v. *U.S.* (9CA. 1962), 300 F. 2d 114, the general law on conspiracy has been most

clearly set out. The *Connally Case* (7CA, 1954), 162 F. 2d 428, shown in original Petition for Writ, clearly applies also to a situation like this, where intimate connections and relationship of alleged conspirators exist—and the records show it. In the *Hernandez Case*, it was held: Under the general law of conspiracy common course of conduct between a defendant and a third person need not be based on express agreement and existence of common scheme or fact of defendant's participation in it need not be proved by direct evidence *and both may be inferred from a development and collocation of circumstances*. Then, at page 122, that Court said:

> "Once it is found that the defendant was connected with the conspiracy, he is equally liable with all those who originated and dominated the common scheme, though he joined it after its inception and his part was minor and subordinate. He is responsible not only for the acts of the co-conspirators in furtherance of the conspiracy following his joinder, but also for purposes that preceded it. Moreover, he is liable for the acts of his co-conspirators though he was not aware of the performance of those acts, *nor even of the existence of the actors.*"

This *Hernandez Case* was a criminal case, but it is elementary law that the rules of evidence applicable in criminal prosecution for conspiracy are likewise as effective in all civil cases for conspiracy where damages are claimed (11 Am. Jur., Section 56—Evidence). See also *Isaac* v. *U.S.* (8CA, 1962), 301 F. 2d 706, holding same as *Hernandez Case*. Moreover, this Court must have overlooked, certainly, the *Connally Case* (7CA, 1947), 162 F. 2d 428, set out on page 16 of original Petition, filed June 11, 1962, showing very clearly what the law is on the

individual and collective interests of alleged conspirators, their situation, intimacy and relationship. On that same page were shown the *Sartor and Gypsum Company Cases*, which must have been overlooked also. These two latter cases were decided in this Court.

See Transcript of Meatyard's Testimony, at Trial 4/24/61, pages 87, 88, 89, 95-97, 99, 101, and 104, particularly where Court says: *"You answer it—you would know better than Meatyard"*; also, pages 108, 112, 114-120, 123, 124, 125, 134, 135, 141-143. *At pages* 87, 88, *Judge Chesnut* said that exceptions and reprimands should be applied equally to both sides, *but the record itself does not show that it was applied equally. At pages* 95 *and* 96, there is a clear showing of Trial Court being biased and prejudiced in favor of Meatyard. *At page* 98, record shows Meatyard evading as to when State Court took jurisdiction of Equity Case, and Trial Court suggests that Maddox inform him. *At page* 99, Judge Chesnut sustains Taylor's objection to bringing out the truth in the case. *And at page* 101, *Judge Chesnut tells Meatyard how to answer questions. Again, at page* 108, Judge sustains Taylor's objection, showing plainly bias and prejudice, etc. *At pages* 112, 113, Trial Court says he does not see what Maddox is driving at and refuses to allow the underlying facts of the conspiracy to be brought out. *And at page* 114, Meatyard admits the hearings before Anderson, Circuit Judge, on *July* 31 *and August* 6, 1956, *after much hammering at him by Maddox*, where he says Maddox's offer to settle all matters was a trifling amount of some $1,000 or $1,500, which was untrue and could have been rebutted if the case had been adjourned on April 25, 1961, until the next day. But Judge Chesnut was determined as the record shows plainly, to finish the case by directing a verdict that day (25th).

At page 115, Meatyard testified he was sure that Carlin, his law-partner, was never at any of the hearings in that Equity Suit against the Shroyers, but Carlin himself testified that he was present at one of the depositions taken by them of the Shroyers, about February 1956, which depositions were never filed in that equity case. *At page* 116, Meatyard's testimony is that he did not know why his letter dated September 12, 1956, purporting to carry out his promise of August 6, 1956, to Maddox, was not posted until September 17, 1956, after Maddox had received Shroyers' letter of same date on the 15th, discharging Maddox from all further connections with Shroyers' matters. *On same page*, Court sustains Taylor's objection, showing bias and prejudice: *"I did not hear all that Mr. Maddox said, but I think I heard enough to say I will sustain the objection." At page* 117, Transcript shows Court doesn't hear Meatyard. *At page* 118, Meatyard recalls clearly what he wants to recall at the conference in Galiher's office about February, 1957, when agreement was reached as to dismissing criminal case against Shroyer, charging embezzlement of funds of the District Supply, Inc., but could not recall Mrs. Shroyer fainting and being carried from the conference room by someone, as she testified in her deposition taken in Baltimore on 5/2/59 (pp. 56, 57).

At page 120, there is shown Meatyard says he did not know on September 12, 1956, that the Shroyers had intended to discharge Maddox from their employment. And *at page* 123, there is shown:

> "A. You asked me that in a deposition and I haven't seen a cancelled check of the Shroyers. THE COURT: Mr. Meatyard, I just don't hear you, please talk louder. THE WITNESS: All right, sir. No, I

haven't seen a cancelled check of the Shroyers. I think Mrs. Shroyer, at one time when we were *at the first meeting in Rockville* (in March, 1957), she mentioned to me she could show me cancelled checks for that amount, *but I never saw them.*"

And at page 124,

"THE COURT: *When was that, some time in* 1959? THE WITNESS: *I think it was* 1959, sir. BY MR. ADDOX: You don't remember the telephone conversation somewhere about the end of September, 1956, that I am referring to pursuant to this letter of mine of September 20, 1956, saying how (that) I would get in touch with you soon? A. *No, I don't remember that.* Q. Would you deny you talked to me over the telephone at that time? A. In September? Q. *About the end of September, a short time after September 20,* 1956. A. *I don't remember talking to you then, no sir.* Q. *Would you deny you talked to me?* A. I am not going to say deny or not, you may have called me. I don't know, but I don't remember talking to you. Q. *Do you remember what you said in your deposition down in Washington about that?* A. *No.*"

In deposition in Washington, taken on March 7, 1960, Meatyard testified (p. 67):

"Q. Did you not tell me, Mr. Meatyard, a short time after that letter of mine to you, dated September 20, 1956, which is a part of Plaintiff's Exhibit No. 1 for identification, over the telephone, that Shroyer had shown you cancelled checks where he had paid

this Plaintiff, myself, for fees and services, in an amount of $4,000, as his attorney, and that you felt that amount overpaid this plaintiff, or you stated words to that effect, didn't you? A. *That is a fabrication, Mr. Maddox.* Q. That is not true? You didn't talk to me over the telephone about checks, is that it? A. *About his fees—your fees? No.*"

At page 125,

"Before Judge Schnauffer?

A. I think we had two hearings out there, Mr. Maddox, I think we had two hearings out there on the same petition to settle and it was at the first one we had. *It was not before Judge Schnauffer, I am sure.*" (March 20, 1957).

At pages 134, 135, *there appears:*

"MR. MADDOX: I am asking if he and the Shroyers, and Hilland representing the Shroyers, didn't file a petition on May 9, 1957, *to have the power of attorney and the assignment rescinded and annulled on account of fraud and duress* into (in the) execution of it. THE COURT: Do you know whether he did or not? BY MR. MADDOX: Yes or no, and then explain it, if you wish. A. Mr. Mack, I hate to bring in another name, *but Mr. Mack is Mr. Hilland's partner*, and Mr. Mack filed the pleading you are speaking of, I am sure. *To my knowledge, I had no previous notice he was filing that. I got a copy of it and I attended the hearing on it, but I don't think I was a party to that pleading.* *** Q. Didn't you write Hilland a letter and give him author-

ities, and so forth, to support his position in that matter? A. I gave him some authorities I had, yes, sir, that I was going to use against you myself. Q. And before that paper was filed? A. *That's right—wait, I gave him that before the paper was filed? No, I sent the letter before the hearing, I am sure.* Q. *When did you know they were going to file that paper?* A. *I told you, I don't think I had previous notice they were going to file it.*"

See Meatyard's Answer to Interrogatory No. 23, sworn to on January 5, 1960, in this case, where he said: Mack called him by telephone a day or two before May 9, 1957 (and said) *that he was going to file it*: "23. I don't think so, *except that Mr. Mack, of Hilland's office, I believe, telephoned me to say that he was filing such a petition a day or two before he did so.*" (This was in answer to the question as to whether or not he had had any discussions, etc., with Hilland about filing such a petition before it was filed).

On pages 135 *et seq.*, Court shows great bias and prejudice against this Petitioner and in favor of Respondents. *And at page* 142, *Court again cannot hear.* "THE COURT: I did not catch the whole question: I hear generally what the question is, but I miss some of the vital words, which controls, very often, my ruling on the evidence. The jury perhaps would not understand how necessary it is for me to hear every word and to hear it distinctly because sometimes missing a word defeats the purpose of the ruling." This is an admission by Judge Chesnut that he cannot hear very well and consequently shows very clearly that throughout the trial of this case, Petitioner has been greatly prejudiced and injured by his

failure to hear well. Thus, the great bias and prejudice shown by the record, throughout the proceedings before this late-88-year-old Judge, is conclusive that Petitioner has not had a *fair and impartial trial of this case, and* that his rulings have been bad.

See Transcript of Testimony of Meatyard of 4/25/61 (at trial): (p. 143)

"MR. MADDOX: I am asking Mr. Meatyard, your Honor, if he remembers the conversation he had with me over the telephone with me about the 21st day of September, 1956, as to the status of the equity case down at Rockville pursuant to my letter —pursuant to his (my) letter of the twentieth. THE COURT: Can you answer? THE WITNESS: He asked me that question yesterday, your Honor, *I don't specifically remember a telephone conversation—that particular date or any date right in there.* BY MR. MADDOX: Would you deny having a telephone conversation with me? A. No, sir. I don't know when it was, but I told you I would not talk to you on the telephone on any occasion in the future. When I told you that, I don't know. But I will not talk to you on the telephone. Q. Would you tell me that date you (said you) wouldn't talk to me on the telephone any time in the future? A. I don't remember, but that's when I told you that I wouldn't discuss anything on the phone with you. Q. *When did you tell me that?* A. *Mr. Maddox, I don't know.* Q. Well do you know you ever told me that (p. 144)? A. *I am sure I did.* Q. Wasn't (that) the time you told me you had seen the $4,000.00 checks cancelled that had been paid me for fees? A. I have never told you I saw the

checks for $4,000.00 because I have never seen them. Q. Didn't you tell me at that time that the equity case was all settled, wiped clean? Does that sound like your words? A. On what day in September? Q. About the twentieth of September. A. *I could not have said it because it was not at that time.* Q. Or shortly after, it was not (as) far up ahead as October, it was my suggestion in that letter, if you remember, read to the jury, it stated I would advise you further or get in touch with you further, in effect. A. *I remember receiving the letter, yes, sir.* Q. And I got in touch with you as a result of that? A. Maybe you did. Q. But you don't remember that conversation? A. *No, sir, I do not remember that conversation. I don't monitor my calls, Mr. Maddox.* I think when I talk to a lawyer, I am talking to somebody I can talk to on open terms and I can't talk to you. Q. Didn't you in your deposition say that you never talked to me on the telephone about that time pursuant to that letter? (p. 145) *** (colloquy with Court) THE WITNESS: MR. MADDOX: *I do not remember talking to you at that time, no, sir.*"

BY MR. MADDOX: Q. But you did have it fixed up with Mr. Christopher here, your old friend *of twenty or thirty years standing?* A. I am very proud of it." *Pp.* 146-161 *Transcript shows bias and prejudice against Petitioner.*

Meatyard and Christopher, in their Testimony tried to convey the idea that they had never talked to each other about these matters but two or three times and that over the telephone. But Meatyard's answer to Interrogatory No. 15, sworn to on January 5, 1960, shows: "15. We have undoubtedly discussed this matter on *in-*

numerable occasions, but no details of our discussions, or dates, come to mind.". In answer to Interrogatory 16, Meatyard said: "I feel that Christopher is entitled to a fee *** *though the matter is of no particular importance to me*": (An old friend of some thirty years standing and of which he is very proud). These conflicting inferences of fact between old friends and conspirators of some thirty years standing, without nothing more, *justified this case going to the jury for a verdict*—without anything more, under *Sartor, Connally and Gypsum Cases*. Undoubtedly, they were overlooked by this Court.

See pages of Transcript of Proceedings before the late Judge Chesnut, where is shown bias and prejudice in his rulings: (Pp. 6-11) He asks the question why should he punish Shroyer for not producing checks when he had been ordered to produce them and he refused to hold him in contempt (both him and Christopher, pp. 10, 11). *On page 26, Court asks Taylor how about the* $500 *assignment by Christopher to be paid to Maddox.*

On pages 21, 22 is shown that Judge Chesnut does not hear Taylor. And at pages 36, 37, he says he does not understand why Maddox is pressing case against Osborne (the Clergyman who wrote the letter of August 28, 1956, to Shroyers *directing that they get his lawyer to represent them*, before Maddox was out of the case on September 15, 1956). *And at page 47, is shown where Court refused to let Maddox argue as to Osborne.* "MR. MADDOX: May I say a word? THE COURT: *No, Mr. Maddox, I am sorry, I can't. I must conclude.*" *And at page 47, is shown where Court refused to extend Trial Date and says "must endure long trials."* But the Trial Judge cut the "long trial" short on the conspiracy counts of Four, Five and six *at*

the end of two days and refused to hear other witnesses who had been subpoenaed for the following days of 26th and 27th . . . . and another important and material witness who was ill at that time, who could have later been gotten into court to rebut many statements made falsely by certain respondents, or her deposition taken, to the same effect.

The fact that the late Judge Chesnut refused to grant Petitioner a Pre-trial Hearing upon proper notice was highly damaging and prejudicial to Petitioner. See pages 4, 5, 6, (Tr. Proceedings—of 3/17/61, R. 330), where Sherbow representing Shroyers *attempted to get a Pre-Trial Hearing and appeared before Trial Judge Chesnut and Thomsen, C.J., without Petitioner being notified.* Judge Chesnut here says Sherbow and Doyle appeared before him in Chambers and submitted a Petition to Thomsen, C.J., Re Pretrial Proceedings; but Petitioner never received a copy of such Petition nor did he know anything about the matter until Judge Chesnut from the Bench on this date referred to it.

II.—

THE LATE JUDGE CHESNUT RULED THAT CHRISTOPHER'S, MEATYARD'S, OSBORNE'S AND THE SHROYERS' DEPOSITIONS COULD NOT BE READ INTO EVIDENCE AT THE TRIAL, BECAUSE THEY WERE TAKEN IN A COMPANION CASE FILED IN THE DISTRICT OF COLUMBIA.

Osborne's Testimony at the trial and his deposition taken in the District of Columbia on August 31, 1959, were highly contradictory. Caliher and Donnelly represented him

on that date. He even changed his testimony in this deposition after it was transcribed in places from negative to positive, and from positive to negative, on material matters without Petitioner being allowed to question him further. Judge Chesnut, as above shown, was positively prejudiced in his favor. His testimony and that of the Shroyers were highly contradictory in places. See *Aetna Insurance Co.* v. *Paddock* (5CA, 1962), 301 F. 2d 807, on Bias and Prejudice of witnesses. In *Powers* v. *Continental Can Co.* (8CA, 1962), 301 F.2d 386, it was held: Jury has function to determine credibility of witnesses and weight to be given their testimony. In the instant case, the late Judge Chesnut, an 88-year old Judge, passed on the credibility of the witnesses and the weight to be given their testimony. This is, of course, contrary to the holdings in practically all of the Circuits. These alleged conspirators were all Marylanders *and Meatyard, Christopher, Galiher, Hilland and Mack;* were old friends practicing law in Montgomery County. *Hilland and Mack* could not be reached to testify in the trial of this case, *although subpoenaed twice*, and Marshall could not find them; obviously they were evading service (see record) before this Court.

In *Anderson* v. *Hudspath Pine, Inc.*, (10 CA, 1962), 299 F. 2d 874, it was held: In passing on a motion for a directed verdict, court may not pass on weight of the evidence or determine where the preponderance of evidence lies. With the exception of clearly incredible evidence, court should not consider or pass on credibility of witnesses and should accept evidence in favor of party against whom motion for directed verdict is made. Undoubtedly this is the well established law and the Trial Court had no right to pass on it in this case, when clearly there was legally sufficient evidence to go to the jury, on the conflicting inferences of fact alone.

A fact-finder is not even compelled to believe the testimony of a witness even if such testimony is not contradicted (Power's Case, supra). In the *Sartor Case, supra*, this Court held: The mere fact that the witness is interested in the result of the suit *is deemed sufficient to require the credibility of his testimony to be submitted to the jury as a question of fact*. Accordingly, the late Judge Chesnut did not have the right to pass on the credibility of witnesses—particularly Meatyard's testimony—when they were all interested in the results of the suit. Meatyard received for his clients about $12,000.00 from Christopher, that the Shroyers allowed to be paid as a reward for refusing to prosecute a criminal case in the District of Columbia that had been instituted against Shroyer for embezzlement of funds of the District Supply, Inc., a former employer.

III.—

THE ORIGINAL RECORDS IN THIS CASE ARE BEFORE THIS COURT AND THEY SHOW THE TRIAL COURT WAS DETERMINED TO END THE CASE, ABOUT FIVE O'CLOCK, ON APRIL 25, 1961, BY DIRECTING A VERDICT ON COUNTS IV, V AND VI, WHEN PETITIONER, REPRESENTING HIMSELF, WAS WORN DOWN AND VERY TIRED, AND JUDGE CHESNUT REFUSED TO ADJOURN OR CONTINUE THE CASE UNTIL THE NEXT DAY, WHEN PETITIONER HAD WITNESSES SUBPOENAED TO TESTIFY ON THE FOLLOWING DAY AT TEN (10) O'CLOCK (27th).

That ruling is most unreasonable—and extraordinary—and it shows the Trial Judge had made up his mind already.

at that time, to dispose of the case, by directing a verdict on these three counts, and not take any chance as to what a jury might do with it on the conflicting inferences of fact that was before it, throughout the entire case. This was horrible injustice—and not due process of law. This Petitioner was deprived not only of due process of law but also a jury trial (see Rule 38(a), FRCP) under the Constitution by the Trial Judge's capricious, willful, arbitrary and dogmatic action or inaction.

Since Judge Chesnut's demise took place on October 16, 1962, according to the report in the Washington Evening Star newspaper, at the ripe old age of 89, it is submitted that this high tribunal should take judicial notice of that fact and draw a reasonable conclusion, that his senility, at the trial of this case alone, warrants a review hereof—and a reversal for a new trial, in order that justice be done in this case and that the important questions of law be involved established for litigants henceforth.

IV.—

PETITIONER SHOULD HAVE HAD, OR SHOULD HAVE, ALL THE JUSTICES OF THIS COURT EXAMINE AND PASS UPON HIS CASE INVOLVING SUCH MATERIAL AND IMPORTANT QUESTIONS AS HAVE BEEN RAISED BY PETITIONER HEREIN

Obviously, this case was examined during the Summer Recess when most of the Justices were away on vacation. The Petition for Writ was Denied on October 8, 1962, and Mr. Justice Goldberg had, at that time, been a Justice for a week, at least, who did not participate, according to the record. Petitioner, therefore, feels and submits that he

should be given the benefit of a consideration and an examination of this case by all of the Justices, before a final judgment thereon is made. No Reply Briefs were filed by the Respondents in this case opposing this Petition for a Writ by Petitioner; Taylor and Doyle waived their right to reply. It is, therefore, assumed that all statements and arguments made by Petitioner therein for a Writ must be taken as true.

The *original records in this case* are before this Court and it is submitted that such records show plainly Petitioner has been deprived of a Jury Trial, on Counts IV, V and VI of his amended complaint by the late Judge Chesnut in directing a verdict thereon; and, further, that Petitioner has not been afforded fair and impartial hearings in this case before said FRCP Trial Judge as the Constitution requires (See Rule 38 FRCP). Great discrimination has been shown against Petitioner in this case by the Trial Court as above indicated, and *Due Process of Law* has not been accorded him. Petitioner should, therefore, be allowed to have all Justices of this Court examine and pass judgment on his Petition for a Writ of Certiorari.

V.—

For the above important reasons and grounds set forth—with briefs and records in file, if necessary—, Petitioner earnestly requests and submits that he be given a Reconsideration of, and a Rehearing on, the Order of October 8, 1962, DENYING his Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit, by all of the Justices, in order that justice be done under the law and Constitution of the United States.

Respectfully submitted:

LUTHER ROBINSON MADDOX, *Pro Se,*
525 Woodward Building,
Washington 5, D.C.
(Phones: DI 7-2323; CO 5-4111)

NOTE: Emphasis added.
DATED: November 2, 1962.

CERTIFICATE OF COUNSEL

I hereby certify that the above Petition for a Rehearing on ORDER of October 8, 1962, DENYING Petition for a Writ of Certiorari in the above-entitled cause, is presented in good faith and not for delay; and that the same is restricted to the grounds specified in Rule 58(2) of this Court.

LUTHER ROBINSON MADDOX, *Pro Se,*